

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

SHAWN E. ERVIN,	:	Case No. 1:20-cv-372
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
HIGHLAND COUNTY PROSECUTOR	:	
ANNEKA P. COLLINS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY  
ADOPTING THE REPORTS AND RECOMMENDATIONS  
OF THE UNITED STATES MAGISTRATE JUDGE (Docs. 17, 21) AND  
TERMINATING THIS CASE IN THIS COURT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on May 19, 2020, submitted a Report and Recommendation (the “First R&R”). (Doc. 17). Plaintiff Shane E. Ervin filed timely objections to the First R&R on June 17, 2020. (Doc. 19).

Plaintiff subsequently filed an amended complaint. (Doc. 20).<sup>1</sup> On June 19, 2020, the Magistrate Judge submitted a Supplemental Report and Recommendation (the “Second R&R”). (Doc. 21). Plaintiff filed timely objections to the Second R&R on July 2, 2020. (Doc. 22).

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<sup>1</sup> The amended complaint in this action supersedes the original complaint for all purposes. *See In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 589 (6th Cir. 2013).

Here, Plaintiff's objections do not identify any errors in the Reports and Recommendations. The Magistrate Judge correctly found that Plaintiff challenges his underlying state criminal convictions through his civil rights complaint, and thus "[b]ecause Plaintiffs' claims would undermine the validity of his convictions in state court, he fails to state any claim that would be cognizable under 42 U.S.C. § 1983." (Doc. 21 at 2 (citing *Heck v. Humphrey*, 512 U.S. 477, 486–87, 114 S.Ct. 2364 (1994))). In response to the Magistrate Judge's finding, Plaintiff simply argues that "[r]elief requested by the plaintiff can easily be granted and can be done by the court." (Doc. 19 at 3). The Court is entirely unpersuaded and agrees with the Magistrate Judge's analysis that Plaintiff's claims are barred by *Heck*. (Doc. 17 at 5–6).

The Magistrate Judge also found that even if Plaintiff's claims were not barred by *Heck*, they fail because Defendants Anneka Collins and James Roeder are prosecutors and Defendant Judge Rocky Coss is a judge, and they therefore are entitled to absolute immunity. (*Id.* at 6–7). In response to the Magistrate Judge's finding that the Defendants are entitled to absolute immunity, Plaintiff argues that a "judge is not immune to high crimes and misdemeanors, conspiracy, declaratory relief, and injunctive relief," and that a prosecutor "do[es] not have immunity for civil or criminal behavior." (Doc. 19 at 4). Plaintiff's objection is not well-taken. The Court agrees with the Magistrate Judge's finding that Judge Coss was performing judicial acts, and Prosecutors Collins and Roeder were acting in their capacity as prosecutors, and all three are therefore entitled to absolute immunity.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court determines that such Reports and Recommendations (Docs. 17, 21) should be and are hereby **ADOPTED** in their entirety.

Accordingly, for the reasons stated above:

- 1) Plaintiff's amended complaint (Doc. 20) is **DISMISSED** as frivolous under 28 U.S.C. § 1915(e)(2)(B) for failure to state any claim.
- 2) All of the accompanying motions (Docs. 6, 7, 8, 9, 11, 12, 14, 15, 16) are **DENIED AS MOOT**.
- 3) The Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore Plaintiff is denied leave to appeal *in forma pauperis*.
- 4) The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** from the docket of this Court.

**IT IS SO ORDERED.**

Date: 8/28/2020

/s/ Timothy S. Black  
Timothy S. Black  
United States District Judge